Krishna Kumar a/l RK Krishnan (sued as public officer for an association registered under the name of Malayan Racing Association/Persatuan Lumba Kuda Malaysia) v Sandana Kumar a/l Sreetharan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02(NCVC)(W)-919–06 OF 2015
HAMID SULTAN, PRASAD ABRAHAM AND ASMABI MOHAMAD JJCA
11 JULY 2017

Administrative Law — Natural justice — Allegations that trial not fair and impartial — Malaysian Racing Association — Whether decision-making process in breach of rules of natural justice which called for judicial intervention — Malaysian Racing Association Rules r 44(8)(a)

The respondent was a professional jockey with a valid license issued by the Malayan Racing Association ('MRA'). While participating in a race event, the respondent sustained injury on his left eye because of mud on the ground splattered into his eye, causing him to exert some control over the horse to avoid falling. The respondent was charged by the Stipendiary Steward's Panel for committing offences in contravention of r 44(8)(a) of the Malaysian Racing Association Rules ('the Rules') where the respondent pleaded not guilty. He was found guilty and was imposed a fine of RM50,000 and was disqualified from riding for two years. The respondent appealed to the racing stewards where the appeal was dismissed and the initial fine was increased to RM70,000. The respondent subsequently brought an action in the High Court. The respondent alleged that the stipendiary steward had not acted in a fair and just manner in dealing with the respondent. The High Court granted judgment to the respondent, hence the present appeal. The only issue for consideration by the court was whether the inclusion of Devaraj Arjunan, an assistant stipendiary steward, and the manner he conducted himself by assuming the role of a witness and a member of the panel presiding over the inquiry had caused the decision-making process to be in breach of the rules of natural justice which called for judicial intervention.

Held, allowing the appeal and setting aside the order of the High Court:

(1) There was no breach of rules of natural justice as the Rules had been complied with. The panel of racing stewards had acted within the bounds of the Rules and appellate intervention by the High Court should not have taken place (see paras 16–17).

(2) The respondent had a fair and comprehensive consideration of his case by the appellant and the decision to suspend the respondent, although seemingly harsh; the High Court had no basis to interfere as it did (see para 19).

[Bahasa Malaysia summary

Responden adalah joki profesional dengan lesen sah yang dikeluarkan oleh Persatuan Lumba Kuda Malayan ('MRA'). Semasa mengambil bahagian di dalam acara lumba kuda, responden mengalami kecederaan di sebelah mata kirinya kerana lumpur atas tanah terpercik ke dalam matanya, menyebabkan dia menggunakan sedikit kawalan ke atas kuda bagi mengelak daripada jatuh. Responden dituduh oleh Panel Pengelola Stipendiari kerana melakukan kesalahan bertentangan peraturan 44(8)(a) Peraturan-Peraturan Persatuan Lumba Kuda Malaysia ('Peraturan-Peraturan') di mana responden mengaku tidak bersalah. Dia didapati bersalah dan dikenakan denda sebanyak RM50,000 dan tidak dibenarkan menunggang untuk dua tahun. Responden merayu kepada pengelola perlumbaan di mana rayuan ditolak dan denda permulaan dinaikkan kepada RM70,000. Responden kemudiannya membawa tindakan ke Mahkamah Tinggi. Responden mendakwa bahawa pengelola stipendiari tidak bertindak dengan adil dan betul dalam mengendalikan responden. Mahkamah Tinggi memberikan penghakiman kepada responden, maka rayuan ini. Satu-satunya isu untuk pertimbangan oleh mahkamah adalah sama ada pemasukan Devaraj Arjunan, penolong pengelola stipendiari, dan cara dia bertindak dengan memegang peranan saksi dan ahli panel yang mempengerusikan siasatan telah menyebabkan proses pembuatan keputusan melanggar peraturan keadilan semulajadi yang memerlukan campur tangan kehakiman.

Diputuskan, membenarkan rayuan dan mengenepikan perintah Mahkamah Tinggi:

(1) Tidak terdapat pelanggaran peraturan keadilan semula jadi memandangkan Peraturan-Peraturan telah dipatuhi. Panel pengelola perlumbaan telah bertindak dalam batas-batas Peraturan-Peraturan dan campur tangan Mahkamah Tinggi tidak sepatutnya berlaku (lihat perenggan 16–17).

(2) Responden telah mendapat pertimbangan yang adil dan menyeluruh terhadap kesnya oleh perayu dan keputusan untuk menggantung responden, walaupun nampaknya kejam; Mahkamah Tinggi tidak mempunyai asas untuk campur tangan seperti apa yang dia buat (lihat perenggan 19).]

Notes

For a case on allegations that trial not fair and impartial, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) para 523.

Cases referred to

Calvin v Carr and others [1979] 2 All ER 440; [1980] AC 574, PC (refd)
R v Brewer ex parte Renzella [1973] VR 375, SC (refd)

Appeal from: Civil Suit No 22NCVC-181–04 of 2013 (High Court, Pulau Pinang)

Chelliah Ponniah Mahendran (RR Chelliah Brothers) for the appellant.
Simon Murali (Simon Murali & Co) for the respondent.

Prasad Abraham JCA:

[1] We heard this appeal on 16 November 2016, and disposed of the same by allowing the appeal and setting aside the order of the High Court granting judgment to the plaintiff in terms of prayers (i), (ii) and (iv) of the statement of claim with costs. We shall describe the parties as cited in the High Court.

MATERIAL FACTS

[2] The plaintiff at material time was a professional jockey with a valid license issued by the Malayan Racing Association ('MRA'), and had been a professional jockey since the year 2006 during which time he has participated in numerous horse race events held in the Penang Turf Club.

[3] On 6 May 2012, the plaintiff participated in a race event that was held in Penang Turf Club, known as 'Race 0'. In this race the plaintiff rode a horse named 'No Uncertainty'.

[4] The race course on which the said event proceeded was wet and muddied due to rain.

[5] While, riding the horse, the plaintiff sustained injury on his left eye as a result of mud on the ground splattered in the air and came into contact with his eye resulted in him having to exert some control over the horse so as to avoid falling.

[6] On 6 June 2012, the inquiry proceeded until its conclusion, pursuant of which, the plaintiff was charged by the Stipendiary Steward's Panel for committing offences in contravention of r 44(8)(a) of the MRA Rules.

[7] The plaintiff who pleaded not guilty to the charges was found guilty and the panel pursuant to r 44(8)(a) of the MRA Rules, imposed a fine of RM50,000 and disqualified the plaintiff from riding for a period of two years pursuant to r 145 of the MRA Rules. The plaintiff then appealed against the decision to the racing stewards.

[8] The racing stewards heard the appeal on 22 November 2012 and dismissed the plaintiff's appeal with the fine of RM50,000 being increased to RM70,000.

[9] The plaintiff before this court is alleging that the stipendiary steward had not acted in a fair and just manner in its dealing with him for the following reasons:

(a) the panel of stipendiary stewards was not properly constituted as required under the MRA Rules because one of the panel members, Devaraj Arujunan was not a stipendiary steward but an assistant stipendiary steward;

(b) the said Devaraj, albeit siting as a member of the panel presiding over the inquiry, assumed the role of a witness when he provided answers and explanations to questions posed by the chief stipendiary panel that pursued, and the inquiry was neither independent nor impartial;

(c) the stipendiary steward panel disregarded the plea of not guilty of the plaintiff to the charge and proceed to find him guilty. Hence the panel had breached the principles of natural justice; and

(d) the stipendiary steward failed to consider material and important fact in that the plaintiff had sustained an eye injury during the race as confirmed by the medical report and the goggles which the plaintiff wore during the race was broken.

[10] The plaintiff further is alleging that the appeal proceedings before the panel of racing stewards was carried out unfairly and in violation of the principles of natural justice when the chief stipendiary stewards were also present in the appeal proceeding and were allowed to question and conduct cross-examination on a witness called by the plaintiff namely Dr Andrew Lim and that the racing steward panel heard and considered the argument of the said chief stipendiary steward panel in arriving at their verdict but yet failed to give any reason for their decision and enhancement of the penalty.

THE ISSUE

[11] The only issue being canvassed in this appeal which incidentally, was the only issue considered by the learned judge ie the inclusion of Devaraj

Arujunan an assistant stipendiary steward and the manner he conducted himself had caused the decision making process to be in breach of the hallowed rules of natural justice and therefore judicial intervention was called for. The defendant argue otherwise and submits the plaintiff are bound by the Rules of the Malaysian Racing Association, hence this appeal by the defendant.

THE APPEAL

[12] The Rules regarding the inquiry conducted by the stipendiary steward are governed by the Rules of the Malaysian Racing Association in particular rr 21 and 22 (pp 257–260 *RR Bhg* C *Jld* 33). It is not in dispute that the plaintiff is bound by these rules. The plaintiff in the court below had raised the point that Devaraj Arujunan was not qualified to sit in the panel of inquiry of stipendiary stewards as prescribed by the rules. Our attention is draw to r 22(3) which clearly provides that the local committee may appoint 'other persons' to the panel, so we do not think much turns on this point.

[13] The bane of the argument in the High Court was the role that Devaraj Arujunan played in the inquiry conducted by the panel of steward. In conducting the inquiry the only guidelines that the rules provide are found in r 21(1), (a) and (b) (pp 257 *RR Bhg* C *Jld* 3) which we now set out:

> (1) In addition to any other powers, duties or functions conferred by these Rules, the Stipendiary Stewards shall have the power and are authorised:
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> (a) To investigate, inquire into and/or adjudicate upon any alleged breach or contravention of the Rules.
>
> (b) To investigate and/or inquire into any matter which in their opinion requires investigation and/or inquiry and any other matter which they are directed by the Committee, Local Committee and/or Racing Stewards to Investigate and or/inquire into.

[14] The powers conferred on the panel appear wide ie to investigate and or inquire. It is an inquisitorial exercise conducted by the panel of racing stewards and given the rather specialised field of horse racing and peculiar practises related to horse racing, we are of the view that the inquiry cannot be looked at in a strait jacket of a hearing. Having evaluated the notes of evidence we find that the said Devraj Arujunan had not over stepped the bounds so to speak we find the decision of the Supreme Court of Victoria in *R v Brewer ex parte Renzella* [1973] VR 375 at pp 389–381 reported in instructive where it was held:

> (1) The stewards' inquiry was subject to the application of so much of the principles of natural justice as were not modified or abrogated by the rules under which the race meeting was conducted and the inquiry entered into.

(2) The rules required the stewards in certain cases to act on evidence provided by personal observation and to form opinions as to probable facts.

(3) The stewards, despite personal convictions of the correctness of their own personal observations, were prepared to give a fair hearing to the prosecutor and to be finally persuaded according to all the evidence.

(4) The stewards had not disqualified themselves from proceeding with the inquiry and exercising their powers in relation to the charges by reason of having prejudged the issues in any relevant sense.

[15] We also refer to the judgment of Adam J at pp 379–381 and 383–384:

> The principles of natural justice, based as they are on a sense of fair play in the process of adjudication, affect not only the administration of justice by the courts but also other tribunals of every kind — administrative tribunals and domestic tribunals whose jurisdiction is based on agreement of the parties — in so far as the powers exercised by them possesses a judicial or quasi-judicial character. However to say that all tribunals, courts and others alike arem in the exercise of judicial or quasi-judical powers, affected by the principles of natural justice is one thing. What are the requirements of natural justice in the particular case where a tribunal bears little resemblance to a court of law is quite another. Tucker LJ said in *Russell v Duke of Norfolk* [1949] 1 All ER 109, at p 118, 'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth'. This passage was approved by the Privy Council in *University of Ceylon v Fernando* [1960] 1 WLR 223 and was used by Kitto J in *Mobil Oil Australia Pty Ltd v Federal Commissioner of Taxation* (1963) 113 CLR 475 at p 504. There his Honour observed, 'What the law requires in the discharge of quasi-judicial function is judicial fairness ... What is fair in a given situation depends upon the circumstances' We agree with the foregoing statements of the relevant law. It is plain that when it is necessary to consider a question of fairness in relation to a tribunal the whole of the circumstances in the field of the inquiry are of importance. The nature of the jurisdiction exercised and the statutory provisions governing its exercise are amongst those circumstances'.
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> Then, on the next page, (ALJR) p 152: 'Those requirements of natural justice are not infringed by a mere lack of nicety but only when it is firmly established that a suspicion may reasonably be endangered in the minds of those who come before the tribunal or in the minds of the public that the tribunal or a member or members of it may not bring to the resolution of the questions arising before the tribunal fair and unprejudiced minds. Such a mind is not necessarily a mind which has not given thought to the subject matter or one which, having thought about it, has not formed any views or inclination of mind upon or with respect to it'.
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> It is not in dispute that the jurisdiction to inquire into, adjudicate upon and punish for racing offences conferred on the stewards under the rules involves the exercise by them of quasi-judicial powers sufficient to attract the principles of natural justice. This is clear enough from the nature of their functions to inquire into, adjudicate upon the conduct of persons participating in race meetings controlled by them, and

where appropriate, inflict punishment upon those adjudged by them to be guilty of any improper conduct. Accordingly, they have a duty to conform to the requirements of natural justice so far as applicable to them.

As indicated in the foregoing observation from the High Court, what the principles of natural justice require of them are to be determined having regard in particular to the rules under which the stewards as a tribunal of inquiry act, to the nature of that inquiry, and in general to all the circumstances of the case.

That the prosecutor is, by his own voluntary agreement, bound by the rules, is conceded. This in my opinion, involves the conclusion that he cannot avail himself of the principles of natural justice in so far as the normal requirements of natural justice have been modified or abrogated by the rules.

The principles of natural justice operate to raise a presumption in aid of construing the rules so that if the construction be reasonably open, the rules will be read as not intended to depart from the requirements of natural justice further than necessary. But after giving full weight to such a presumption in favour of natural justice, the proper conclusion is that the rules depart from those principles, then to that extent these principles have no application.

... Suffice it for me to say that a reading of these cases has not persuaded me that, save in exceptional circumstances such as do not exist here, the principles of natural justice override the principles of the law of contract.

... What then do the rules provide relevant to the nature of a stewards' inquiry and the principles of natural justice? It is the stewards acting at a race meeting and no others who are to exercise the powers of inquiry conferred under the rules, AR (8)(d), and to convict and punish offenders. The same stewards are required to attend at race meetings and to perform what in many respects resemble the function of policemen to watch and observe racing in all its aspects, on the look-out for any improper conduct on the part of participants which may be the subject of a subsequent inquiry to be conducted by themselves.

It is conceded that at such an inquiry they are entitled, nay bound to act upon their own personal observations as part of the evidence before their inquiry. It is conceded too, that if they decide that the evidence warrants charging an offence, then they must formulate the charge and notify the person to be charged of the particulars of the charge. Thus they must also act as accusers. As it is their duty after inquiry to find the charges sustained or otherwise, and if sustained also to impose an appropriate punishment, we are presented under the rules with a tribunal of a character radically different from that of an ordinary court of law, but required to exercise powers of a similar nature. It is clearly quite contrary to the ordinary concept of a fair trial that the judge should also have acted in the role of a policeman and made personal observations on the very matters to be adjudicated upon, that he should himself be the accuser, that he should himself be, as in many instances here must be the case, the principal witness for the prosecution, and entitled, if persuaded by the accuracy of his own personal observations, to act on such evidence, whatever evidence to the contrary may be adduced.

... In substance, the only requirements of natural justice unaffected by the rules relating to the stewards and their inquiry, because not therein dealt with, are that the

> stewards must give adequate notice to a person charged of the precise charges against him, and a fair opportunity after hearing the evidence against him of making his defence thereto.
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> ... The honesty and bona fides of the stewards was not attacked on behalf of the prosecutor.
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> ... I consider that right minded persons, familiar with the rules of racing, and in particular with the role of the stewards as witnesses as well as judges, could not reasonably entertain such suspicion as suggested. A suspicion that the prosecutor would not obtain such a fair trial as he might well expect from the courts, I agree, but not a suspicion that the stewards would forego their duty at the inquiry because as witnesses they formed, and were entitled to form, strong opinions as to the probable facts.
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> ... From the evidence before me and from decisions cited to me from other countries, it is evident that the relevant rules of racing of the VRC relating to stewards' inquiries are in a common and universally accepted form.
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> ... Much of the criticism which might otherwise have been levelled at the racing rules in connexion with stewards' inquiries and their apparent disregard of some of the rules of natural justice lose force when it is found that the rules of racing do not treat the proceedings at the stewards' inquiry as final, but give ample opportunity for appeals by way of rehearing to racing committees in which the stewards are but witnesses, and in no sense judges in their cause.

[16] We find that the breach rules of natural justice argument lose force in our instant case as the MRA rules had been complied with. The plaintiff had lodged an appeal to the racing steward pursuant to r 23 of the MRA Rules. The procedure governing the conduct of appeal hearings are set out for rr 145–149 of the MRA. These rules are exhaustive and are akin to a large extent to appeal filed in the civil courts. The notes of evidence of the appeal appear in CCBD (2) Tab 5(b) looking at rr 145(4) and 146(1) of the MRA.

[17] We find that panel of racing steward had acted within the bounds of the relevant rules of the MRA and appellate intervention by High Court should not have taken place.

[18] We refer to the decision of the Privy Council in *Calvin v Carr and others* [1979] 2 All ER 440; [1980] AC 574, a case in evolving steward inquiry in horse racing where it was held (1) and (2) and to the judgment of Lord Wilberforce at p 575 was held:

> (1) That notwithstanding that a decision of an administrative or domestic tribunal which had been reached in breach of the rules of natural justice might for certain purposes be void it was nevertheless susceptible of appeal and that therefore, assuming (without deciding) that inquiry, the Jockey Club committee had had jurisdiction to entertain the plaintiff's appeal from the stewards' decision to disqualify him (post, pp 589G–590B, E–F,

591E–H).
White v Kuzych [1951] AC 585, PC considered
Denton v Auckland City [1969] NZLR 256 doubted

(2) That although there was no general rule as to whether appellate proceedings could cure a defect due to a failure of natural justice in original proceedings there was a broad spectrum of domestic proceedings between those where the inquiry stage could be said to have merged in the appellate stage and those where a complainant might be prejudiced unless he had a fair trial at both stages where a person who had joined in an organisation or contract was to be taken to have agreed to accept a fair result reached after a consideration of the case on its merits; that the test was whether after both original and appellate stages the complainant had had a fair deal of the kind he had bargained for when joining the organisation or contract; and that accordingly, since in the case of the *Australian Jockey Club* disputes and discipline were within the consensual category and those taking part in racing were to be taken to have accepted the club's Rules of Racing and to be bound by the committee's fair decisions and since on the facts the committee had given the plaintiff's case overall a full and fair consideration, any failure of natural justice by the stewards at the inquiry stage was irrelevant and there was no basis on which a court could interfere) C–F, 593D–F, 594D–G, 596G–597A, D).

[19] Having viewed all the evidence led before the stipendiary steward, and the notes of proceedings before the racing panel, we find that the plaintiff had overall a fair and comprehensive consideration of his case by the defendant and the decision to suspend the plaintiff although seemingly harsh; we find the High Court had no basis to interfere as it did. We therefore allowed the appeal with no order as to costs and the judgment of the High Court set aside. We further ordered that RM20,000 paid to the solicitor as stakeholder to be refunded to the appellant within 14 days from the date of this order. Deposit to be refunded.

Appeal allowed; order of High Court set aside.

Reported by Fatin Mohd Ismail